

## HOUSE BILL NO. 424

INTRODUCED BY J. POMNICHOWSKI

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE NAMES OF PERSONS OR ENTITIES SEEKING A PERMIT OR TIMBER SALE OR BIDDING ON A LEASE OF STATE LAND IS PUBLIC INFORMATION; CLARIFYING THAT PERMITS, CONTRACTS, AND LEASES ARE PUBLIC RECORDS; REMOVING THE RESTRICTIONS ON DISCLOSURE OF INFORMATION DERIVED FROM CERTAIN MINING LEASES AND PERMITS; AND AMENDING SECTIONS 77-1-905, 77-3-102, 77-3-130, 77-3-201, 77-3-211, 77-3-301, 77-3-308, 77-3-401, 77-3-451, 77-3-501, 77-4-101, 77-4-201, 77-5-201, 77-6-202, AND 77-6-501, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 77-1-905, MCA, is amended to read:

**"77-1-905. Rental provisions for commercial leasing -- payments and credits -- administration -- lease options -- public information.** (1) The first year's annual rental payment for state trust land leased for commercial purposes must be paid by cashier's check, and payment is due upon execution of the lease. The department may require the lessee of state trust land for commercial purposes to pay the department's cost of the request for proposals process, including publication and other reasonable expenses. Failure to pay the first year's rental at the time of lease execution must result in the cancellation of the lease and forfeiture of all money paid. In the event of cancellation or in the event that the successful proposer is offered and does not accept the lease, the board may enter into negotiations with other persons who submitted a proposal for commercial purposes in response to the department request for proposals on that tract.

(2) The board shall specify in any commercial lease an annual rental equal to the full market rental value of the land. The annual rent may not be less than the product of the appraised value of the land multiplied by a rate that is 2 percentage points a year less than the rate of return of the unified investment program administered by the board of investments pursuant to 17-6-201. The rate of return from the unified investment program used in this subsection must be determined no less than 30 days prior to the execution of the competitive bid. A commercial lease may include a rental adjustment formula established by the board that periodically adjusts the annual rent provided for in the lease at frequencies specified in the lease. The board may allow a credit against

1 the annual rent due for payments made by the lessee on behalf of the state of Montana for construction of  
2 structures and improvements, special improvement district assessments, annexation fees, or other city or county  
3 fees attributable to the state's property interest in land leased for commercial purposes. The board may accept  
4 as lawful consideration in-kind payments of services or materials equal to the full market value of the rent  
5 calculated to be owed on any commercial lease. A lease issued under this part may include an amortization  
6 schedule to be used to determine the value to the lessee of improvements when the lease is terminated.

7 (3) Except for rent received from lands granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C.  
8 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, the department may use up to 10% of  
9 the annual rent received from a commercial lease to contract with realtors, property managers, surveyors, legal  
10 counsel, or lease administrators to administer the commercial lease, either singly or in common with other leases,  
11 or to provide assistance to the department in the administration of commercial leases.

12 (4) In anticipation of entering into a commercial lease, the board may issue an option to lease at a rental  
13 rate that the board determines to be appropriate. An option to lease may not exceed a term of 2 years. An option  
14 to lease may not be construed to grant a right of immediate possession or control over the land but may only  
15 preserve the optionholder's exclusive right to obtain a commercial lease on the land in the future.

16 (5) The name of a person or entity seeking an option to lease or submitting a bid for a commercial lease  
17 is public information. A commercial lease is a public record."

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19 **Section 2.** Section 77-3-102, MCA, is amended to read:

20 **"77-3-102. Mining leases authorized.** (1) The board may, in its discretion, subject to the other  
21 provisions of this part, lease state lands, including the beds of navigable streams and the beds of navigable  
22 bodies of water and the reserved mineral rights of the state in ~~lands~~ land sold or leased by the state, to any  
23 person, association, or corporation; for the purpose of prospecting for or mining metalliferous minerals or gems.

24 (2) These leases may be for a period of time determined by the board, subject to limitations contained  
25 in the grants by which the state has acquired title to the leased lands or mineral rights ~~so leased~~.

26 (3) Leases issued under this part ~~shall~~ must give the lessee, ~~so as~~ as long as ~~he the lessee~~ complies with  
27 the terms and conditions of the lease, the exclusive right of possession of the ~~lands~~ land or mineral rights leased,  
28 subject to any reservations contained in the leases.

29 (4) ~~In short the~~ The board in making the leases may exercise business discretion, ~~so as~~ as long as this part  
30 is not violated.

(5) The name of a person or entity seeking a permit or a lease or submitting a bid for a lease is public information. A lease or permit issued under this part is a public record."

**Section 3.** Section 77-3-130, MCA, is amended to read:

**"77-3-130. ~~Limitation~~ No limitation on public inspection rights.** The department may not withhold from public inspection any information obtained from a mining lessee or permittee under this part, if the including information that relates to the geology of the mining lease or permit. ~~The withholding is effective for as long as the department considers it necessary either to protect the mining lessee's or permittee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest."~~

**Section 4.** Section 77-3-201, MCA, is amended to read:

**"77-3-201. Nonmetallic mineral leases authorized.** (1) When there are found upon state ~~lands~~ land deposits of stone, limestone, oil shale, clay, bentonite, calcite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand, ~~or~~ phosphate, sodium, potash, sulfur, fluorite, ~~or~~ barite, or any other nonmetallic minerals, but not including coal, oil, or gas, valuable for building, mining, or other commercial purposes, the board may in its discretion issue permits or leases to private persons for the removal and disposition of the ~~above-named~~ deposits upon ~~such~~ terms and conditions as that the board may determine.

(2) The name of a person or entity seeking a permit or a lease or submitting a bid for a lease is public information. A lease or permit issued under this part is a public record."

**Section 5.** Section 77-3-211, MCA, is amended to read:

**"77-3-211. ~~Limitation~~ No limitation on public inspection rights.** The department may not withhold from public inspection any information obtained from a lessee under this part, if the including information that relates to the geology of the mining lease. ~~The withholding is effective for as long as the department considers it necessary either to protect the lessee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest."~~

**Section 6.** Section 77-3-301, MCA, is amended to read:

**"77-3-301. Coal leases authorized.** (1) In response to an application or on its own initiative, the board may lease, in a manner that it considers to be in the best interests of the state, any state ~~lands~~ land ~~to which the~~

1 ~~title is vested in the state and~~ in which the coal or coal rights are not reserved by the United States for exploring  
2 for, mining, removing, selling, and disposing of the coal, upon the terms and conditions provided in this ~~section~~  
3 part and subject to the rules that the board prescribes.

4 (2) The name of a person or entity seeking a permit or a lease or submitting a bid for a lease is public  
5 information. A lease or permit issued under this part is a public record."  
6

7 **Section 7.** Section 77-3-308, MCA, is amended to read:

8 **"77-3-308. ~~Limitation~~ No limitation on public inspection rights.** The department may not withhold  
9 from public inspection any information obtained from a coal mining lessee or permittee under this part, ~~if the~~  
10 including information that relates to the geology of the mining lease or permit. ~~The withholding is effective for as~~  
11 ~~long as the department considers it necessary either to protect the lessee's or permittee's economic interest in~~  
12 ~~the geologic information against unwarranted injury or to protect the public's best interest."~~  
13

14 **Section 8.** Section 77-3-401, MCA, is amended to read:

15 **"77-3-401. Oil and gas leases authorized.** (1) The board is ~~hereby authorized and empowered to~~ may  
16 lease in ~~such a manner as it may determine, not inconsistent~~ consistent with The Enabling Act and the  
17 constitution; any state lands land to which the title has vested in the state and in which the oil and gas rights are  
18 not reserved by the United States; for prospecting and exploring for oil and gas, mining, drilling, developing, and  
19 removing the ~~same oil and gas~~ upon the terms and conditions ~~herein~~ prescribed in this part to any person,  
20 association, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the  
21 state.

22 (2) ~~This~~ The power and authority to lease state lands land for ~~such oil and gas~~ purposes ~~shall extend~~  
23 extends to and ~~include~~ includes all lands owned by the state under navigable lakes and streams and ~~shall~~ also  
24 ~~extend~~ extends to and ~~include~~ includes all ~~those state lands which have~~ land that has been sold but in which the  
25 oil and gas rights have been reserved by the state; ~~but in such cases~~ For reserved rights and in all cases ~~where~~  
26 in which the lands ~~are~~ land is under lease for grazing, agriculture, or similar purposes, care ~~shall~~ must be taken  
27 in issuing the oil and gas leases to protect the rights of the purchaser or lessee.

28 (3) The name of a person or entity seeking a permit or a lease or submitting a bid for a lease is public  
29 information. A lease or permit issued under this part is a public record."  
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1           **Section 9.** Section 77-3-451, MCA, is amended to read:

2           **"77-3-451. ~~Limitation~~ No limitation on public inspection rights.** The department may not withhold  
3 from public inspection any information obtained from an oil or gas lessee under this part, ~~if the~~ including  
4 ~~information, including drill logs, seismic data, and lithographic descriptions, that~~ information, including drill logs, seismic data, and lithographic descriptions, that relates to the geology of the oil  
5 or gas lease. The public information includes drill logs, seismic data, and lithographic descriptions. ~~The~~  
6 ~~withholding is effective for as long as the department considers it necessary either to protect the lessee's~~  
7 ~~economic interest in the geologic information against unwarranted injury or to protect the public's best interest."~~

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9           **Section 10.** Section 77-3-501, MCA, is amended to read:

10           **"77-3-501. Lease for underground storage of natural gas authorized -- public information.** (1) The  
11 board is ~~hereby authorized and empowered to~~ may lease in ~~such a~~ such a manner and upon ~~such~~ such terms ~~as it may~~  
12 ~~determine, not inconsistent~~ consistent with The Enabling Act and the constitution, state ~~lands~~ land ~~to which the~~  
13 ~~title has vested in the state, subject to existing rights, for use for the underground storage of natural gas upon the~~  
14 ~~terms and conditions herein prescribed in this part, to any natural gas public utility authorized to do business in~~  
15 ~~this state and engaged in the business of transporting or distributing natural gas by means of pipelines into,~~  
16 ~~within, or through this state for ultimate public use.~~

17           (2) State ~~lands which~~ land that may be leased ~~shall include lands~~ includes land in which the deposit of  
18 native gas ~~shall have~~ has been depleted, ~~provided if~~ provided if the lessee pays to the state the amount specified by the  
19 board for the native gas ~~then~~ remaining in the ~~lands~~ land to be leased.

20           (3) The name of a person or entity seeking a permit or a lease or submitting a bid for a lease is public  
21 information. A lease or permit issued under this part is a public record."

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23           **Section 11.** Section 77-4-101, MCA, is amended to read:

24           **"77-4-101. Geothermal leases authorized -- public information.** (1) The board may lease ~~state-owned~~  
25 ~~lands~~ state land, including the beds of navigable streams and the beds of navigable bodies of water, to persons;  
26 ~~associations, or corporations~~ entities for prospecting, exploration, well construction, and the production of  
27 geothermal resources.

28           (2) The board may exercise business discretion in entering into leases under this part.

29           (3) The name of a person or entity seeking a permit or a lease or submitting a bid for a lease is public  
30 information. A lease or permit issued under this part is a public record."

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2       **Section 12.** Section 77-4-201, MCA, is amended to read:

3       **"77-4-201. Lease or license of power sites -- public information.** (1) It is unlawful to sell or advertise  
4 for sale state ~~lands~~ land constituting ~~a power sites~~ site or part of ~~a power sites~~ site capable of developing  
5 hydroelectric energy in commercial quantities. However, the board may issue a lease or license to any person,  
6 ~~corporation~~ entity, or municipality for the development of ~~a power sites~~ site and ~~for~~ the distribution, use, and  
7 disposition of the electrical energy generated on the ~~sites~~ site as ~~specifically~~ provided in this chapter.

8       (2) The name of a person or entity seeking a license or a lease or submitting a bid for a lease is public  
9 information. A license or lease issued under this part is a public record."  
10

11       **Section 13.** Section 77-5-201, MCA, is amended to read:

12       **"77-5-201. Sale of timber -- public information.** (1) Under the direction of the board, the department  
13 may sell the timber crop and other crops of the forests after examination, estimate, appraisal, and report and  
14 under any rules established by the board. Timber or forest products sold from state trust lands may be sold by  
15 a stumpage method or a lump-sum method or marketed by the state through contract harvesting as provided in  
16 77-5-214 through 77-5-219.

17       (2) Timber proposed for sale in excess of 100,000 board feet must be advertised in a paper of the county  
18 in which the timber is situated for a period of at least 30 days, during which time the department must receive  
19 sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

20       (3) (a) In cases of emergency because of fire, insect, fungus, parasite, or blowdown or to address forest  
21 health concerns or in cases when the department is required to act immediately to take advantage of access  
22 granted by permission of an adjoining landowner, timber proposed for sale not in excess of 1 million board feet  
23 may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any bids,  
24 upon approval of the board, or it shall award the sale to the highest responsible bidder.

25       (b) (i) In cases when the department is required to act immediately to take advantage of access granted  
26 by permission of an adjoining landowner and there is only one potential buyer with legal access, the department  
27 may negotiate a sale of timber not in excess of 1 million board feet without offering the timber for bid if the sale  
28 is for fair market value.

29       (ii) The provisions of subsection (3)(b)(i) do not apply to situations when the only access is totally  
30 controlled by a potential purchaser of the timber, in which case the department shall seek to negotiate permanent,

1 reciprocal access.

2 (c) In the situations described in subsections (3)(a) and (3)(b)(i), the department is not required to comply  
3 with the provisions of 75-1-201(1) to the extent that compliance is precluded by limited time available to take  
4 advantage of the sales opportunities described by this subsection (3).

5 (4) The name of a person or entity seeking a sale or submitting a bid for a sale is public information. A  
6 contract or lease issued under this part is a public record."

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8 **Section 14.** Section 77-6-202, MCA, is amended to read:

9 **"77-6-202. Lease by competitive bidding -- full market value required -- public information. (1)**

10 When the department receives an application to lease an unleased tract, it shall advertise for bids on the tract.  
11 The tract must be leased to the highest bidder unless the board determines that the bid is not in the state's best  
12 interest for the reasons set forth in 77-6-205(2). The board may not accept a bid that is below full market value.  
13 If the high bid is rejected, the board shall set forth the reasons for the rejection in writing. The lease may be  
14 issued, at a rental rate to be determined by the board, to the first bidder who is willing to pay the  
15 board-determined rate whose name is selected through a random selection process from all bidders on the tract.

16 (2) The name of a person or entity submitting a bid for a lease is public information. A lease issued under  
17 this chapter is a public record."

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19 **Section 15.** Section 77-6-501, MCA, is amended to read:

20 **"77-6-501. Agricultural leases -- public information. (1)** As to agricultural ~~lands~~ land, all leases except  
21 lease renewals upon which the lessee has made improvements at the lessee's expense, as provided in  
22 subsection (3), must be continued or made upon a crop share rental basis of not less than one-fourth of the  
23 annual crops to the state or the usual landlord's share prevailing in the district, whichever is greater. ~~The~~  
24 However, the board may, ~~however,~~ approve special crop share rentals of less than one-fourth for high production  
25 cost crops, such as but not limited to potatoes and sugar beets, or for high production cost methods when these  
26 methods would result in more income to the state. The board may not delegate the authority to approve special  
27 crop share rentals.

28 (2) Except in the case of cash lease renewals under subsection (3), if it is in the best interests of the  
29 state, the department may authorize a lease upon other bases than crop share, but in these cases, the rental  
30 must at least equal the value of the usual landlord's share prevailing in the district under similar circumstances,

1 and the department shall set forth in the records the conditions of the case and the rental to be charged.

2 (3) In a case in which the lessee has made substantial improvements for irrigation purposes to the lease  
3 at the lessee's own expense, the department shall authorize a cash lease renewal at not less than \$15 an acre  
4 on the portion of the lease that has been improved.

5 (4) For all agricultural leases issued through competitive bidding provided for under 77-6-202 or  
6 77-6-205, the department shall require on any competitive bid greater than a one-third crop share a minimum  
7 annual guarantee of not less than \$15 an acre.

8 (5) The name of a person or entity submitting a bid for a lease is public information. A lease issued  
9 under this part is a public record."

10 - END -